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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,671	10/22/2001	James L. Jason JR.	10559/502001/P11794	2397
20985	7590	12/04/2006	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				HSU, ALPUS
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/045,671	JASON, JAMES L.
	Examiner Alpus H. Hsu	Art Unit 2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 September 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21,23-30,32,33 and 35-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-21, 23-30, 32, 33, 35-39 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

1. Applicant's arguments with respect to claims 1-21, 23-30, 32, 33, 35-39 have been considered but are moot in view of the new ground(s) of rejection.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 38 and 39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 38-39 are directed to machine logic tangibly embodied in hardware, which do not fall into any category of statutory subject matter.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5: Claims 1-21, 23-30, 32, 33, 35-39 are rejected under 35 U.S.C. 102(e) as being anticipated by CHIEN et al. in U.S. Patent No. 6,891,832 B1 (of record), hereinafter referred as CHIEN.

Regarding claims 1-21, 23-30, 32, 33, 35, 38 and 39, CHIEN discloses a method and hardware comprises means for performing the method of determining a maximum packet size for data packets sent along a network path by: sending a data packet along a path from a first network point to a second network point; along the path, generating fragment packets from the data packet; analyzing the size of at least one of the fragment packets relative to a maximum packet size; and depending on a result of the analysis, re-setting the maximum packet size based

on the size of the at least one of the fragment packets (see col. 3, lines 10-18, col. 4, lines 9-14, col. 5, lines 11-16, col. 8, line 42 to col. 9, line 5, col. 9, line 57 to col. 11, line 3, col. 11, lines 16-36).

Regarding claims 36 and 37, CHIEN also discloses a computer program embodied in a computer readable medium or a carrier wave, the program capable of configuring a computer to and a medium bearing intelligence configured to enable a machine to effect actions that: send a data packet along a path from a first network point to a second network point; along the path, generate fragment packets from the data; analyze the size of at least one of the fragment packets; and depending on a result of the analysis, re-set a maximum packet size based on the size of the one of the fragment packets (see col. 3, lines 39-42, col. 11, line 56 to col. 12, line 3, col. 13, lines 20-36).

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Valencia and Fichou et al. are further cited to show the feature of packet fragmentation over transmission link/path when packet size is greater than maximum transmission units (MTU) similar to the claimed invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571)272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHH



Alpus H. Hsu
Primary Examiner
Art Unit 2616